



LEGAL UPDATE

DEFENDANTS IN PROSTITUTION STING COULD NOT BE CHARGED WITH HUMAN TRAFFICKING

Commonwealth v. Garafalo, 104 Mass.App.Ct. 161 (2024).

RELEVANT FACTS

In August 2021 the State police conducted a prostitution sting in which they placed advertisements on the internet with a photograph of a woman offering sex for a fee. The five defendants involved in this case individually contacted the number listed in the advertisement and were provided with the address of a hotel where they would meet the woman for the services offered. Upon arrival at the hotel, each of them was arrested.

The defendants were indicted on two charges: human trafficking (MGL c 265 § 50) and engaging in sexual conduct for a fee (MGL c 272 § 53A.) The defendants filed motions to dismiss the human trafficking charges.

DISCUSSION

The human trafficking statute states, in pertinent part:

"Whoever knowingly: (i) . . . attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity . . . shall be guilty of the crime of trafficking of persons for sexual servitude."

The defendants argued that they did not initiate the offer of sex, nor did they stand to profit from it. For these reasons, the defendants argued that the "recruit, entice...or obtain by any means" elements of the statute were not met.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

“Entice” means to incite, instigate, draw on by arousing hope or desire, allure, attract, draw into evil ways lead astray or tempt.

“Recruit” means to hire or otherwise obtain to perform services, to secure the services of another, to muster, raise, or enlist.

The court interpreted “entice” and “recruit” in the human trafficking statute to include an element of causing another to engage in conduct or an act which the person was not otherwise intending to engage.

“The defendants here responded to advertisements posted by someone else – they did not initiate the offer of commercial sex, nor, on these facts, did they take actions to cause another person to do something that person did not otherwise intend to do. The defendants did not “incite” or “tempt” nor did they “attract.” Rather, the person they were communicating with had initiated the offer, and no tempting was required or occurred.” p. 169.

The defendant’s actions also do not fall under the more generic phrase “obtain by any means.” The statute requires the defendant to “obtain by any means, another person.” This implies some level of control over the other person or of changing that person’s will or intent.

The court also relied on the legislative history in its interpretation of the statute. When the legislature enacted the human trafficking statute, it amended the sex for a fee statute at the same time. The court found the fact that human trafficking carries a five-year mandatory minimum sentence and the sex for a fee statute is a misdemeanor with no mandatory minimum sentence to be strong evidence that the legislature intended to treat people who agree to pay for sex less severely than human traffickers.

“Where we find the history helpful, however, is in suggesting that § 53A sufficiently differs from MGL c 265 § 50 that some conduct covered by § 53A is not covered by § 50, and thus not subject to a five-year mandatory minimum sentence. The conduct alleged by the Commonwealth here falls into that category.” p. 172.

Based upon the facts of this case, the orders dismissing the human trafficking convictions were affirmed.